

## ***II. Remarks***

Upon entry of the foregoing amendment, claims 30-31, 36, 44-57, 61-63, 67-68, 71, 74-76 are pending in the application, with 30, 36, 46 and 67 being the independent claims. Claims 31, 56-57, 62-63, and 71 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

### ***III. Reply to Restriction Requirement***

In reply to the Restriction Requirement dated July 8, 2005, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the subject matter of Group I, represented by claims 30-31, 36, 44-45, 55-58, 67-68, 71, and 74-76.

This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Applicants reserve the right to pursue the non-elected claims in one or more divisional applications. In such case, Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

This election is made **with** traverse.

Applicants respectfully traverse the Restriction Requirement as it applies to Groups I and III. Groups III and I are related as a process of making and the product made. It is the Examiner's position that the antibody compositions of Group I (claims 30-36, 44-45, 55-60 and 67-76) are distinct from the method of purification of Group III (claims 46-54 and 61-66) because the antibodies of Group I can be made recombinantly. Applicants submit that that the antibodies of Group I cannot be made recombinantly, or by any other materially different process.

Group I consists of F(ab')<sub>2</sub> antibody fragments that are capable of *neutralizing* venoms. A venom is comprised of an antigenic molecule that has a characteristically complex native structure. Alternatively, a venom may also be comprised of a complex antigenic mixture. The inventors are not aware of any successful attempt to produce *recombinant* F(ab')<sub>2</sub> antibody fragments capable of neutralizing these complex antigen(s), as of the priority filing date, March 5, 2001. As of March 5, 2001, the antibodies of Group I could only be produced using the method of purification prescribed in Group III.

Therefore, the composition of Group I is not distinct from the method of Group III and Restriction is not proper.

Furthermore, Applicants point out that MPEP § 803 lists the criteria for a proper Restriction Requirement:

Under the statute, the claims of an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § 802.01, § 806.06, and § 808.01) or distinct (MPEP § 806.05 – § 806.05(i)).

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

Thus, even assuming, *arguendo*, that the subgroups listed by the Examiner represent patentably distinct species, restriction remains improper unless it can be shown that the search and examination of the listed groups would entail a "serious burden." *See* M.P.E.P. § 803. In the present situation, no such showing has been made.

Accordingly, reconsideration and withdrawal of the Requirement for Restriction, and rejoinder of Groups I and III, is respectfully requested.

#### ***IV. Provisional Election of Species***

In the Restriction Requirement of July 8, 2005, the Examiner has also required an election of species. Applicants hereby provisionally elect scorpion venom as the antigenic molecule. In view of these provisional elections, claims 30-31, 36, 44-46, 55-57, 61-63, 67-68, 71, and 74-76 read on the provisionally elected species, with claims 30, 36, 44-46, 55, and 67 being generic.

This election is made without traverse.

This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Applicants reserve the right to pursue the non-elected claims in one or more divisional applications. Applicants also reserve the right to have additional species examined in the event that a generic claim is found to be allowable in accordance with 37 C.F.R. § 1.141(a).

**V. Conclusion**

Prompt and favorable consideration of the Preliminary Amendment and Reply to Restriction and Election of Species Requirements is respectfully requested. Applicants believe the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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